

REMARKS**I. Introduction**

Claims 1-64 and 66 are currently pending in the present application. Claims 1, 55, 58-60, and 66 are independent. All claims stand rejected under 35 U.S.C. §102(b) as being allegedly anticipated by the website www.peapod.com (hereinafter “Peapod”).

Upon entry of this amendment, which is respectfully requested, independent claims 1, 55, 58, 59, and 60 will be amended for purposes of clarification, independent claim 66 will be cancelled without prejudice or disclaimer, and new claims 67 and 68 will be added.

No new matter is believed to be introduced by this amendment, and Applicants believe that the subject matter of all pending claims has previously been searched by the Examiner.

II. The Examiner’s Rejections

All pending claims stand rejected under §102(b) as being allegedly anticipated by Peapod. Applicants respectfully traverse this ground for rejection as follows.

A. The cited reference fails to teach or suggest: A method of facilitating a transaction wherein no buyer preference is indicated among the plurality of products in each of the plurality of categories

Applicants respectfully assert that Peapod fails to teach or suggest limitations of independent claims 1, 55, 58, and 60, as amended, as well as new independent claim 68. In particular, Peapod fails to teach or suggest the limitation wherein no buyer preference is indicated among the plurality of products in each of the plurality of categories (a limitation generally recited by each of the above-referenced independent claims).

Peapod is simply not directed to allowing a buyer to purchase products without indicating a preference between products. Even in the case that a Peapod customer allows and/or requests substitutions to be made for products that are not in stock, for example, the customer in Peapod must still indicate a product that is preferred over all others in a given category. The customer may select Jiff™ peanut butter for purchase, for example,

and allow Peapod to substitute Skippy™ peanut butter if Jiff™ is not in stock when the customer's order is filled. The Jiff™ peanut butter *must*, however, be selected (*i.e.*, indicating a preference for that specific product) over all other peanut butters in order to purchase any peanut butter from Peapod.

In contrast, currently claimed embodiments allow a buyer to purchase a product (*e.g.*, from a category, like "peanut butter") without indicating a preference among products. Buyers acting in accordance with some currently claimed embodiments may, for example, simply specify that "peanut butter" is desired to be purchased, and let the controller choose which specific peanut butter the buyer will get.

Accordingly, at least because Peapod fails to teach or suggest the limitation wherein no buyer preference is indicated among the plurality of products in each of the plurality of categories, Peapod fails to anticipate independent claims 1, 55, 58, and 60, as amended, as well as new independent claim 68. Applicants therefore respectfully request that the §102(b) rejection of independent claims 1, 55, 58, and 60, be withdrawn, and that independent claims 1, 55, 58, and 60, as amended, as well as new independent claim 68 be allowed.

Dependent claims 2-54, 56-57, and 61-64 are believed patentable at least for depending upon patentable base claims (*i.e.*, independent claims 1 and 55). Applicants therefore respectfully request that the §102(b) rejection of dependent claims 2-54, 56-57, and 61-64 be withdrawn, and that dependent claims 2-54, 56-57, and 61-64 be allowed.

Further, many dependent claims recite limitations not taught or suggested by Peapod. Peapod does not, for example, teach or suggest the limitation of claim 36 wherein the evaluating comprises calculating a probability that an offer will be accepted based on: (i) the offer amount, and (ii) at least one minimum acceptable price associated with the selected products. Simply nowhere in Peapod is such a limitation taught or suggested.

B. The cited reference fails to teach or suggest: A method of facilitating a transaction wherein the offer price may differ from an offer price defined by another buyer for the same first and second subsets of products

Applicants respectfully assert that Peapod fails to teach or suggest limitations of independent claim 59, as amended, and new independent claim 67. In particular, Peapod

fails to teach or suggest the limitation wherein the offer price may differ from an offer price defined by another buyer for the same first and second subsets of products.

Peapod is simply not directed to allowing a buyer to specify and/or define a price for products, much less a price for a particular product (or product category) that may differ from a price for the same product (or product category) offered by another buyer. There is no suggestion in the Peapod web pages that two customers could, for example, visit the Peapod site and define different prices for the same product. Peapod fixes the prices displayed for every product and no customer can offer or define a price different than a displayed price.

In contrast, currently claimed embodiments allow a buyer to submit a buyer-defined offer price that may differ from buyer-defined offer prices submitted by other buyers, for the same product or product category. This may, for example, be similar to the “name your own price”TM buyer-driven commerce model utilized by Priceline.comTM. (See, for example, U.S. Patent No. 5,794,207 entitled “Method and Apparatus for a Cryptographically Assisted Commercial Network System Designed to Facilitate Buyer-Driven Conditional Purchase Offers” and the related patent applications incorporated by reference in the present application). Peapod simply does not describe or even suggest such a limitation.

Accordingly, at least because Peapod fails to teach or suggest the limitation wherein the offer price may differ from an offer price defined by another buyer for the same first and second subsets of products, Peapod fails to anticipate independent claim 59, as amended, and new independent claim 67. Applicants therefore respectfully request that the §102(b) rejection of independent claim 59 be withdrawn, and that independent claim 59, as amended, as well as new independent claim 67 be allowed.

III. Conclusion and Petition for Extension of Time

At least for the foregoing reasons, it is submitted that all claims are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remain any questions regarding the present application or the cited reference, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number 203-461-7017 or via electronic mail at cfincham@walkerdigital.com.

Petition for Extension of Time to Respond

Applicants believe a **two-month extension** of time within which to respond to the Office Action is due with this response. Accordingly, Applicants petition for a two-month extension of time and authorize the charge of \$225.00 to our Deposit Account No. 50-0271. However, if an additional fee should be due, please charge it to our Deposit Account No. 50-0271. Please charge any additional fees that may be required for this Response, or credit any overpayment to Deposit Account No. 50-0271.

If an extension of time is required, or if an additional extension of time is required in addition to that requested in a petition for an extension of time, please grant a petition for that extension of time which is required to make this Response timely, and please charge any fee for such extension to Deposit Account No. 50-0271.

Respectfully submitted,

July 8, 2005
Date


Carson C.K. Fincham
Attorney for Applicants
Registration No. 54,096
Walker Digital, LLC
cfincham@walkerdigital.com
203-461-7017 /voice
203-461-7300 /fax